

Schuckers Drywall & Plastering and United Brotherhood of Carpenters & Joiners of America, Carpenters District Council of Baltimore & Vicinity, AFL-CIO. Case 5-CA-25371

July 16, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon a charge filed by the Union on May 19, 1995, the General Counsel of the National Labor Relations Board issued a complaint on September 22, 1995, against Schuckers Drywall & Plastering, the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On June 14, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On June 17, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 1, 1996, the Charging Party filed a letter in support of the General Counsel's motion. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 8, 1996, notified the Respondent that unless an answer were received by April 22, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a sole proprietor with an office and place of business in Chesapeake, Virginia (the Respondent's facility), has been

engaged in the installation, service, and repair of drywall and plastering. During the 1995 calendar year, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 in States other than the State of Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about March 6, 1995, the Respondent has refused, and continues to refuse, to consider for employment and/or to employ the following named individuals: Lonnie Anderson, Janet McDonguld, Earl Gerke, Randy Gerke, Gary Reynolds, William Salbeck, and Leroy Wraner. The Respondent engaged in this conduct because these employees of the Respondent joined, supported or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to consider for employment or to employ Lonnie Anderson, Janet McDonguld, Earl Gerke, Randy Gerke, Gary Reynolds, William Salbeck, and Leroy Wraner, we shall order the Respondent to offer them immediate employment that they would have had, but for the unlawful discrimination against them, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful refusal to consider for employment or to employ these indi-

viduals, and to notify them in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Schuckers Drywall & Plastering, Chesapeake, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to consider employees for employment and/or to employ them because they join, support, or assist United Brotherhood of Carpenters & Joiners of America, Carpenters District Council of Baltimore & Vicinity, AFL-CIO, or engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Lonnie Anderson, Janet McDonguld, Earl Gerke, Randy Gerke, Gary Reynolds, William Salbeck, and Leroy Wraner immediate employment in the same positions that they would have had, but for its unlawful discrimination against them or, if those jobs no longer exist, to substantially equivalent positions.

(b) Make the foregoing individuals whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful refusals to consider for employment or to employ and within 3 days thereafter notify the foregoing individuals that this has been done and that the unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Chesapeake, Virginia, copies of the attached notice marked "Appendix."¹ Copies of the no-

tice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 19, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to consider employees for employment and/or to employ them because they join, support, or assist United Brotherhood of Carpenters & Joiners of America, Carpenters District Council of Baltimore & Vicinity, AFL-CIO, or engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Lonnie Anderson, Janet McDonguld, Earl Gerke, Randy Gerke, Gary Reynolds, William Salbeck, and Leroy Wraner immediate employment in the same positions that they would have had, but for our unlawful discrimination against them or, if those jobs no longer exist, to substantially equivalent positions.

WE WILL make the foregoing individuals whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful refusals to consider for employment or to employ, and within 3 days thereafter notify the foregoing individuals that this has been done

and that the unlawful conduct will not be used against them in any way.

SCHUCKERS DRYWALL & PLASTERING